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Book Review

Voting Rights Struggles in Georgia

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Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia.* New York: Cambridge University Press, 2003, 245 pp., paperback, $20.

Despite the widespread impression that anyone can teach history, and almost anyone can write it, the talents of lawyers and historians are actually rather disjoint. Historians are typically distance runners, mulling alone for years over obscure primary sources to come up with lengthy, sometimes deep, but rarely dazzling narratives. They synthesize; they write books. In contrast, attorneys are sprinters, working on tight deadlines, usually handling too many cases in too many areas of the law, rarely having either the time or the inclination to make sense of it all. They cross-examine; they write briefs.

Laughlin McDonald, director of the ACLU's Southern Regional Office in Atlanta since 1972, is a superb courtroom lawyer with the soul of a historian. In this book, he brilliantly analyzes the convoluted tangle of restrictions on black electoral rights in Georgia, restrictions that he himself has done much to unravel, drawing heavily on the records of cases he argued. If you ever believed that voting was simple, that racial discrimination in politics ended almost immediately after the passage of the Voting Rights Act in 1965, or that the Supreme Court of the 1990s was only attempting to restore a previously "colorblind" process in its "racial gerrymandering" decisions, this coolly objective, quietly passionate book will change your mind.

Many historians, social commentators, and everyday citizens, black and non-black alike, seem to believe today that American race relations have almost no history. In this radically foreshortened view, slavery, a tale of unending woe, gave way after the Civil War to a quasi-slavery that was broken only when the civil rights marches of the 1960s somehow briefly appealed to the American conscience. Irrational discriminatory laws were repealed, but white racism remained, along with hopeless black ghettoes. Laws cannot really change practices or attitudes, many people assume, and to attempt that project is at best ineffective and at worst counter-productive. To optimists of this persuasion, continued governmental action in favor of minorities is futile, because whites are now as enlightened as they will ever be, and laws are or should be rigidly unconscious of color. Affirmative action and voting rights laws should be repealed or very tightly constrained. To pessimists, continued governmental action is also futile, because racist whites will never change.

As both historian and reformer, McDonald takes a more nuanced approach. "One of the most striking, and perhaps one of the most reassuring, things about the black odyssey in pursuit of equal voting rights," he remarks, "is that it demonstrates that racial attitudes are not immutable but are in a profound sense self-serving economic, political, legal, and social conventions" (5). All of the dire predictions from southern white politicians about the per-

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ils of allowing African-Americans to vote freely or of abolishing legal segregation have proven false, while two that they silently feared—that whites would renounce formal segregation and accept black voting—have come true. To a native white South Carolinian like McDonald, Georgia's example proves that there has been both more change *and* more continuity in race relations than some denizens of colder climes realize. On the one hand, the changes between the B.C.E. (before civil rights era) and A.D. (after Martin Luther King, Jr.'s death) periods seem much more real than, for instance, Derrick Bell recognizes, and law has been a much more potent producer of those changes than, for example, Gerald Rosenberg allows. On the other hand, there have been many more continuities than such "colorblind" theorists as Stephan and Abigail Thernstrom admit.[1] Just as important, the agents of the changes in voting rights that McDonald chronicles—ordinary black folk and their lawyers, not nationally known civil rights heroes and heroines—serve to validate the still-controversial changes themselves by providing further evidence that widely celebrated African-Americans are not the only ones who can use law and political power strategically and responsibly.

In the first election in which African-Americans could vote in Georgia, in April 1868, white Democrats violently and unsuccessfully attacked blacks, who were almost unanimously Republican, beginning a long tradition of political discrimination that was simultaneously racial and partisan. By September, Democrats in the legislature had secured enough white Republican support to pass a resolution expelling all black legislators, on the grounds that neither the Fifteenth Amendment nor Georgia's post–Civil War constitution explicitly protected blacks' right to hold office. Only the national government's intervention ended this first attempt to differentiate between the power to vote and that to elect a candidate of African-Americans' choice.

Both Republicans and Democrats, from the 1860s on, understood perfectly well which political rules and structures fostered black political power and which impeded it, and they manipulated these rules at the earliest opportunity. Thus, the Republican-majority state legislature of 1870 mandated ward elections for Atlanta and Macon, and black aldermen won office for the first time in each city, much to the consternation of Democrats. Republicans also decreed that school boards throughout the state were to be elected by wards or, in rural areas, by militia districts. The 1870 legislature passed further bills protecting voters on the way to or at the polls, and prohibiting officials from requiring that poll taxes be paid before a male citizen could register to vote. Nonetheless, violence and intimidation carried the Democrats into control of the legislature and the governor's office in 1871. As McDonald notes, "From 1867 to 1872, at least a quarter of the state's black legislators were jailed, threatened, bribed, beaten, or killed" (35). Soon after the 1871 legislature convened, the Democratic majority revised rules that had benefitted African-American voters, substituting at-large for ward elections, reinstituting the poll tax, repealing the anti-intimidation law, and providing for the appointment, rather than the election, of school board members. In policies and personnel, Georgia government was thereafter increasingly bleached out. By 1874, there were only three blacks in the lower house of the state legislature and but one in the upper. As Georgia sprang ahead of the rest of the South in passing politically restrictive laws, it pioneered, as well, in the speed at which blacks lost office during Reconstruction. At the state's 1877 constitutional convention, Georgia Democrats made the poll tax permanent and cumulative; to register, a man had to pay all poll taxes assessed on him since his 21st birthday or since 1877. This may have been the single most effective disfranchisement law ever passed.

These were not the only kinds of election laws passed. Registration laws allowed officials—virtually all Democrats from 1871 to the 1970s—to expand the electorate if votes were needed or contract it if certain kinds of voters

[1] Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (New York: Basic Books, 1987); Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: University of Chicago Press, 1991); Stephan Thernstrom and Abigail Thernstrom, *America in Black and White: One Nation, Indivisible, Race in Modern America* (New York: Simon and Schuster, 1997).

were threatening. Crimes that blacks were more likely than whites to be convicted of, such as larceny, were added to the short list of offenses that barred men from the voting rolls. Electoral districts were gerrymandered and over- or under-populated to insure that only white Democrats won. White primary laws shut African-Americans out of the most important elections. To end any possibility of a surge of black voting strength, Georgia Democrats passed a state constitutional amendment in 1908 that provided that voters had to be either literate, or own 40 acres of land or $500 worth of property. Exceptions allowed military veterans or their descendants or people of "good character" to register to vote—all crude subterfuges to facilitate racial discrimination by registrars. No African-American served in the Georgia state legislature from 1908 to 1962, and Jefferson Long, who served from December 1870 through March 1871, was the state's only black member of Congress before 1972.

Still, some blacks, most notably in Atlanta and Macon, managed to register to vote in the 1920s and 30s, and after the outlawing of the white primary in Texas in *Smith v. Allwright* (321 U.S. 649 [1944]) in 1944, African-Americans flooded the registration rolls in Georgia more than in any other Deep South state. In 1940, only about 20,000 blacks had been registered to vote; by 1948, 125,000 were. Coincidentally, the poll tax was repealed in 1945, when the arch racist Eugene Talmadge apparently calculated that its abolition would assist his 1946 gubernatorial campaign. Repeal was intended to facilitate poor white, not black voting, and in some cities in the state, the payment of all taxes continued to be enforced as a registration requirement as late as 1970. Nonetheless, the substantial elimination of the poll tax requirement gave election officials one less weapon against black suffrage.

With the two chief barriers to black political participation down, other bars were raised to fill the same functions. Literacy and understanding tests were made much more difficult, requiring voters, for example, to name all of the counties in the voter's judicial district and define "republican government" to the satisfaction of a registrar. Drawing more on the records of state and federal trials of the 1970s, 80s, and 90s than any other historian of recent black suffrage has, McDonald shows how various versions of the literacy test were administered in practice, how challenges to black voters were resolved, and how intimidation took place. Election officials in heavily black precincts even deliberately slowed down the voting so that blacks would be left waiting in line when the polls closed. Often, the tactics were less subtle. When black schoolteacher Wilson Roberson went to the Bleckley County Courthouse to try to register to vote in 1955, the chief of police unceremoniously escorted him out, telling him that "No niggers register in this courthouse," which was then the only place in the county where anyone *could* register (56). Purge laws allowed registrars to delete from the lists many blacks who did manage to register. In his inaugural address in 1955, Gov. Marvin Griffin called for "a solid white vote" to preserve legal segregation and discrimination (72).

Georgia's statute books were not only stained by laws providing for pervasive racial separation, from birth in Jim Crow hospitals to burial in segregated graveyards, they also contained the unique "county unit" system of electing certain statewide officials. From 1917 to 1963, a majority or even a plurality of the popular vote was not necessary to win these elections, so long as a candidate got a majority of the county unit votes, which were allocated identically to the grossly malapportioned state house seats. By 1960, the eight counties with the largest populations contained 41% of the population, but only 12% of the house members and county unit votes. The 103 smallest counties held 22% of the population, but were allocated a majority of the house and county unit representation. Rural areas in the sparsely settled, largely white mountains and the rural "black belt" counties, where few of the numerous blacks were allowed to register, controlled the state's politics, heavily supporting the Talmadge and Griffin wing of the Democratic party. The county unit system, as Gov. Ernest Vandiver lamented, after it was struck down by the Supreme Court in *Gray v. Sanders* (372 U.S. 368 [1963]), had been "a bulwark against . . . big city and minority bloc control" (84). The malapportioned legislature, another bulwark,

quickly followed the county unit system into legal oblivion.

Before these changes could go into effect, however, the unreformed legislature countered by adopting a provision sponsored by "liberal" Governor-elect Carl E. Sanders providing for at-large elections for the state senate in counties with more than one state senator. This 1962 bill, McDonald shows, was an effort to defeat black Atlanta attorney Leroy Johnson, who was then running for the state senate. Unfortunately for Sanders, the statute blatantly violated the state constitution, which could not be amended quickly enough to overthrow the district system before Johnson became the first black state legislator in Georgia elected in 54 years. A more effective attempt to curb "the bloc vote," a phrase synonymous at the time with the *black* vote, required candidates to receive a majority of the votes in primaries and general elections. Sponsored by Denmark Groover, leader of the segregationist/county unit forces in the last legislative session in which they were in control of the Georgia House, 1963–64, and also endorsed by the Sanders Administration, the majority-vote provision had a well-advertised racial purpose. In any election district where black voters were in the minority, whites could divide their support between two or more white candidates in the primary and then unite to defeat a black candidate in the runoff. Like other discriminatory rules and structures, the majority vote requirement inhibited minority candidacies, as calculating politicians avoided hopeless contests.

Legal, extra-legal, and even blatantly illegal practices marred Georgia elections in the 1950s and early 60s. Civil rights workers who urged a boycott of still-segregated schools in Americus in 1963 were charged with "insurrection," a capital offense under a law that the U.S. Supreme Court had declared unconstitutional thirty years earlier (113). Seventeen municipalities and 48 counties in the state required segregated polling places as late as 1962. When the Justice Department filed suit to end the practice, a local Macon leader charged that the federal government was destroying "every vestige of local government." In Terrell County, Sheriff Zeke Matthews broke up civil rights meetings, threatened civil rights workers, and jailed voter registration campaigners on trumped-up charges. When arsonists burned a black church where civil rights meetings had been held and someone fired a shotgun into a house where civil rights workers were staying, wounding one of them, the local Terrell County newspaper speculated that publicity-seeking blacks were the culprits. Local whites eventually confessed to the arson. In 1960, only five African-Americans had managed to register in majority-black Terrell County, and Student Non-Violent Coordinating Committee workers struggled without much success to register more.[2]

Their task was eased by the enactment of the Voting Rights Act in 1965. In the three years after passage, the proportion of African-Americans registered in Georgia jumped from 27% to 53%, and reached 54% in "Terrible Terrell." But registration remained complicated, and election officers continued to exercise discretionary authority over the process. Local and state officials maintained or even heightened structural barriers to black political power, despite Section Five of the Act, which required any changes in election laws in "covered jurisdictions" like Georgia to be pre-cleared by the Justice Department before being put into effect. Many Georgia jurisdictions initially ignored Section 5. Of 11 counties with significant black populations that changed the form of elections for county government from single-member districts to at-large and 14 that adopted at-large elections for school boards from 1964 to 1970, only one sought pre-clearance under Section 5. Twenty-three municipalities amended their charters after 1968 to require majorities, rather than pluralities, to elect city officials. In several cases, black candidates had recently come close to election under the plurality system, suggesting that the shifts to majority-vote regimes were made to avoid electing African-Americans. Few of these changes were submitted for pre-clearance.

Less dramatic than civil rights marches, sit-

[2] By 1963, only 98, or 2.4% of the blacks of voting age in Terrell County were registered. U.S. Commission on Civil Rights, *Political Participation* (Washington, DC: U.S. Commission on Civil Rights, 1968), 236–37.

ins, or violence, changes in the structure of local governments have rarely attracted the attention of historians. As the Georgia examples prove, however, the legal strategy of southern white supremacists—scream "states' rights" and manipulate electoral rules—remained strikingly constant from the First Reconstruction in the 19th century to its successor 100 years later. Whether the Second Reconstruction would erode into a Second Redemption depended on the diligence and skill with which lawyers shaped and used the Voting Rights Act and the Constitution after 1965. Although he does not directly discuss his role, through litigation, consultation, and scholarship, Laughlin McDonald was one of the central figures in molding the Voting Rights Act over the course of the 1970s and 80s.

While the Civil Rights Division of Lyndon Johnson's Justice Department was too preoccupied with voter registration to issue regulations for Section 5, Richard Nixon's found time. Fifteen of the 22 Georgia counties that shifted to at-large elections for county or school board elections from 1971 to 1976 eventually submitted the changes for pre-clearance. Only two were allowed to put the changes into effect. Thirty Georgia cities adopted majority-vote requirements in this period, and Justice objected to 26 of them. This pattern did not simply represent the liberalism or fidelity to the law's purposes of the Administration that introduced the phrase "southern strategy" into national parlance. Local representatives of minority groups, usually with advice from lawyers, took active parts in the pre-clearance process. However messy and *ad hoc* that process was, once institutionalized and blessed by the Supreme Court's decision in *Allen v. Board of Elections* (393 U.S. 544 [1969]), Section 5 did effectively prevent changes in the form of elections that would have worsened the positions of minorities. Nonetheless, white bloc voting slowed the integration of elective office. In 311 election contests between black and white candidates from 1970 to 1990, only an average of 12–14% of whites voted for a black candidate. In 1975, only 21 of 236 members of the legislature, two of 530 mayors, and fewer than 2% of the members of county governing boards in Georgia were black (153).

To speed political integration, voting rights lawyers employed not only Section 5 of the Voting Rights Act, concentrating on changes in election laws that had never been submitted for pre-clearance, but also Section 2 of the Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution. At-large elections were the principal target. Between 1972 and 1987, the ACLU and other public-interest and private lawyers challenged at-large elections in 134 Georgia counties, towns, cities, and school boards, forcing changes to district elections in nearly all instances. From mammoth Fulton County (Atlanta) to tiny Putnam County (Eatonton), conditions were similar: a history of segregation and discrimination, exclusion of blacks from white churches and civic organizations where local political connections were nurtured, racial bloc voting, discrimination in governmental services, and few or no elected African-American officials. Under the standard established by the Supreme Court in *White v. Regester* (412 U.S. 755 [1973]), lawyers for minorities could win by checking off a series of factors that showed an overall discriminatory effect. The shift from at-large to district systems encouraged black candidacies and facilitated black victories. Between 1980 and 1990, the number of African-American county commissioners in the state rose from 20 to 97, the number of black municipal officeholders, from 146 to 246. District elections were necessary to elect such candidates because racial bloc voting persisted.

The *White v. Regester* standard was temporarily displaced by the Supreme Court's 1980 decision in *City of Mobile v. Bolden* (446 U.S. 55 [1980]) that there could be no violation under Section 2 without proving intent. As a result of *Bolden*, the Justice Department and public interest groups stopped filing Section 2 suits and defendants ceased offering settlements. In response, the civil rights community, including McDonald, massed to amend Section 2 when Section 5 of the Voting Rights Act was up for renewal in 1982. After skillful lobbying and devastating testimony about the continuation of discriminatory behavior, an addition to Section 2 that essentially overruled *Bolden* was adopted by a landslide bipartisan majority over the tepid opposition of the Reagan Adminis-

tration. Accompanied by an extensive Senate report that effectively wrote the constitutional standards of *White v. Regester* into Section 2 law, the strengthened Voting Rights Act seemed to represent a political consensus that the protection of minority voting rights ranked next to population equality as a value in the design of electoral structures. Although arising out of an at-large election case (*Bolden*), the amended Section 2 would be applied most controversially to redistricting.

Beginning in the 1960s with the population equality challenges, at least one statewide redistricting plan in Georgia has been successfully challenged in federal court in every decade. In response to the Justice Department's refusal to pre-clear the 1971 state legislative plan, the state contended that the Voting Rights Act did not apply to redistricting, or that if it did, it was unconstitutional. The Supreme Court rejected the state's arguments in *Georgia v. U.S.* (411 U.S. 526 [1973]). In its congressional plan of that year, the line-drawers split Atlanta between three districts, carefully excluding the residences of the leading black candidates and including the addresses of potential white candidates in a central Atlanta district designed to be only 38% black, in order, as its legislative sponsor publicly announced, to ensure the election of "a white, moderate, Democratic Congressman." The legislature, which was obviously unconcerned with district appearance, drew another district shaped, according to an Atlanta journalist, like a turkey's neck and in places, "as skinny as a flamingo's leg" (150). Apparently uninterested in avian similes, the Department of Justice ignored the ungainly district, but objected to the Atlanta cracking as a dilution of minority voting power. In response, the legislature redrew the lines, and in the 1972 election, Andrew Young became, along with Barbara Jordan of Houston, one of the first two black members of Congress from the South elected since 1898.

In 1981, the Justice Department again lodged a Section 5 objection against the state legislative plans, and when the legislature redrew them, the number of majority-black house seats was increased from 24 to 30, and the number of senate districts, from two to eight. The congressional districts of the 1980s, like those of the 1970s, were unaesthetic, "snaking across the map of Georgia," as one of the plan's supporters in the state senate put it, or, as an opponent in the state house remarked, "one of the most outlandish things I have seen since I've been in the legislature" (168). Once again, the Justice Department refused to play art critic, but it did object to the configuration of the Atlanta district that Andrew Young had occupied until he left to become the U.S. representative at the United Nations. His successor was a liberal white Democrat. Even though the legislature had increased the district's black percentage, Justice announced that the plan would not be pre-cleared because it had a discriminatory intent. Georgia sued in the District of Columbia court to force pre-clearance, but lost ignominiously when two legislators testified that redistricting committee chair Joe Mack Wilson announced in private that he would never allow a congressional district to contain a working black majority because "I don't want to draw nigger districts" (170). When the three-judge District of Columbia Court officially declared that "Representative Joe Mack Wilson is a racist"[3] and forced the plan to be redrafted to increase the black proportion of the Atlanta district, Wilson exploded: "[I]f you don't condescend and give in to everything black people want, you're tagged a racist" (173). The Supreme Court quickly affirmed the decision.

Before the 1990s redistricting, the Supreme Court issued one major decision interpreting the revised Section 2, *Thornburg v. Gingles* (478 U.S. 30 [1986]). Drawing on an article that originated as congressional testimony by a voting rights lawyer during the debate over the Voting Rights Act, Justice William Brennan spotlighted three of the nine "Senate Report factors." A Section 2 violation would be found where there was a sufficiently large and geographically compact minority group to form a district within the larger jurisdiction, where the minority typically voted as a bloc, and where whites usually voted *en bloc* to defeat minority-preferred candidates. The widely agreed-on implication of *Gingles* for redistricting was that, if it was possible to draw a district in which mi-

[3] *Busbee v. Smith*, 549 F.Supp. 494, at 500 (D. D. C. 1982).

norities could elect their candidate of choice, a jurisdiction that failed to do so could expect to lose a subsequent Section 2 case. *Gingles* gave blacks, Native Americans, Latinos, and an activist Civil Rights Division of the Justice Department unprecedented leverage over redistricting, and they used it nowhere more openly and effectively than in Georgia.

During the 1980s, the Atlanta congressional district was the only one of the state's 10 that was majority black in population, and it was the only one to elect an African-American member of Congress.[4] Besides *Gingles*, three other factors facilitated an expansion in black representation in 1991. First, the growth of the state's population had given Georgia another congressional seat, which meant that a new district could be carved out without necessarily displacing any incumbent. Second, the simultaneous growth of the number of black legislators and (white) Republican legislators meant that African-Americans made up a larger proportion of the legislative Democrats than at any previous redistricting. And third, the legislative leaders, keenly aware of the Justice Department's rejection of the plans of the 1970s and 80s, and humiliated by the redneck image left by Joe Mack Wilson's 1981 remark, wished to avoid yet another rebuff. Blacks pressed for three majority-black seats among the state's total of 11, which would have approximated their 27% of the state's population. When the legislature voted for only two, the Justice Department refused to pre-clear the plan, pointing to a third majority-black district in the "Max Black" plan, which had been drawn by ACLU lawyers and endorsed by the legislative black caucus and the state's major black organizations. The legislature came back with two seats in which African-Americans comprised a majority of the voting age population and a third where they were 45%. Again the Department of Justice rejected the plan, seemingly convinced by evidence that the current extent of racial bloc voting in Georgia usually prevented the election of candidates that were the first choices of black communities except in majority-black districts. This time, the legislature pushed three districts over the 50% black voting age population threshold, and Justice allowed the plan to go into effect. In 1992, for the first time in the state's history, Georgia sent to Washington more than one African-American member of Congress. In the 11 states of the former Confederacy as a whole, the number of black members of Congress skyrocketed from five in 1990 to 17 in 1992, all from majority-black districts.

In the Second Reconstruction, as in the First, when black faces in positions of power multiplied, whites lashed back by reshaping the law. After *Shaw v. Reno* (509 U.S. 630 [1993]) removed the requirement that those who challenged substantially minority electoral districts had to prove that they were injured or discriminated against or that the legislature intended to discriminate against them—requirements that minority plaintiffs attacking electoral structures under the Constitution continue to have to prove—several white Georgians, including a losing Democratic congressional candidate who no longer lived in the district he questioned, filed suit asking that the new 11th congressional district be declared unconstitutional. By a 2-1 vote, a federal judicial panel condemned the 11th, partly because the district's irregular shape and racial composition indicated an intent to distinguish between people on the grounds of race—a standard never before or since applied to districts dominated by whites—and partly because of the influence of what it termed the "direct link" between the ACLU, the legislative black caucus, and the U.S. Department of Justice in the state's redistricting. In a doubtless unconscious echo of the 1868 Georgia legislature's expulsion of its African-American members, the outraged judges implicitly treated the 1991 legislature as lily-white, declaring that, after the adoption of the final redistricting plan, "The ACLU was exuberant. Georgia officials and citizens were mystified" (217, quoting *Johnson v. Miller*, 864 F.Supp. at 1368). But under the Voting Rights Act, the Justice Department has a special responsibility to protect minority rights in the electoral process, and comments from interested groups have always been necessary to

[4] When the white incumbent, Wyche Fowler, moved up to the Senate in 1986, he was replaced by John Lewis, a former leader of the civil rights movement.

carry out the congressional intent in passing Section 5. Moreover, although the judges, one supposes, did not mean to deny that black legislators were officials or citizens, their presumption about the normative color of power was palpable.

Georgia, the United States, and minority intervenors represented by the ACLU appealed, and in *Miller v. Johnson* (512 U.S. 622 [1995]), the same 5-4 majority that had decided *Shaw* affirmed the lower court's decision in the Georgia case in even more sweeping terms than *Shaw* had employed. Completely disregarding the state's history of racial discrimination in the voting and redistricting processes and every other aspect of its political culture, a history that Justice Ruth Bader Ginsburg, echoing the ACLU's brief, pointedly rehearsed in her dissent in the case, Justice Anthony Kennedy's majority opinion announced that district shapes did not matter so long as the "predominant factor" in drawing a district was racial and that the district did not even have to be majority-minority to be unconstitutional. Abjuring any discussion of the facts of Georgia's political life, Kennedy's opinion seemed to assume that Georgia electoral laws had always been color-blind until 1991, that every irregularity in the 1990s district lines had a racial, rather than a partisan or personal explanation, and that racial bloc voting was non-existent in the state. No one reading McDonald's book can doubt that Kennedy's opinion was completely divorced from either history or current reality.

On remand, the increasingly confident lawyers for the plaintiffs and the eagerly cooperative district court majority declared the other non-Atlanta black-majority district unconstitutional, even though it looked much prettier than the 11th on a map.[5] When the legislature deadlocked, pleading confusion about the new standards, the district court drastically redrew every district in the state. The court justified its remapping of the 11th district on the grounds that in the redesigned district, Interstate 85 served as "a very real connecting cable"[6] of the district's counties, a justification that McDonald charitably treats as ironic, since the 12th North Carolina district ruled unconstitutional in *Shaw* had been characterized as "bizarre" and "irrational on its face" by the Supreme Court for following that same highway farther north (221). Although the plan of the two Democratic district court judges unpacked blacks in ways that state politicians believed favored white Democratic congressional candidates, the only Democrats elected to Congress in the next election, in 1996, were the three black incumbents, one in the predominantly African-American Atlanta district, the second in a district that was majority black by 2000, and the third in a district that by the 2000 census was only 41% black in total population. These last two members of Congress won their primary races because whites either stayed home or voted in the Republican primary, and their general elections, in racially polarized contests, by invoking the party loyalties of enough white Democrats to win in overwhelmingly Democratic districts.

In the *Miller* litigation, Georgia had defended its plan in cooperation with the Justice Department and the ACLU. After the district court's second decision, however, the state switched sides and contended that its initial plan, which had two majority-black districts, was the product of "the illegal excesses of the DOJ." Again, the same 5-4 majority of the Supreme Court affirmed, disregarding the detail, stressed by Justice Stephen Breyer in dissent, that the Justice Department's disagreements with the state began only *after* Georgia had adopted a two-district plan on its own, and treating the fact that 30–39% of whites voted for a black candidate in the general election in two districts as demonstrating a "general willingness" of whites to vote for black candidates[7] (223). A parallel and even more complicated story of the state legislative redistricting had the state first expanding, and then after *Miller*, contracting the number of majority-African-American districts, but black politicians, having demonstrated to white voters that they could represent anyone, regardless of race, hanging on in the new districts in 1996 and 1998.

Facts like widespread racially polarized vot-

[5] *Johnson v. Miller*, 922 F.Supp. 1552 (S. D. Ga. 1995).
[6] Ibid., p. 1564.
[7] *Abrams v. Johnson*, 521 U.S. 74 (1997).

ing and unsubtle racial appeals even in statewide election campaigns, which continued to besmirch Georgia politics through the 1990s, did not seem to matter to the majority of either the district court or the Supreme Court. They were much more intent on asserting that the existence of minority opportunity districts would exacerbate racial tensions, stigmatize someone, or deprive whites of representation. Georgia's experience during the 1990s, McDonald shows, bears out none of these dire speculations. Rather than absorbing the evidence, judges were busy brandishing double standards. Oddly shaped majority-white districts raised no suspicions, while convoluted lines bounding majority-minority districts were nearly conclusive proof of constitutional violations.[8] The three congressional districts that in Georgia averaged a 58-42 racial breakdown were tarred with the *Shaw* charge of "segregation," while the eight that averaged an 87-13 balance were not, apparently because blacks formed a majority of the voting age population in the first set of districts and whites, in the second. White partisan and interest group pressure during redistricting was only to be expected, and white communities of interest never lacked legitimacy in the courts' eyes. In contrast, judges treated the black legislative caucus, pro-black interest groups, and the Justice Department as nefarious conspirators, and Justice Kennedy denied that black voters, the most politically united large group in the country, could form a community of interest.[9] In the Supreme Court majority's "colorblind" world, white was normal and normative.

Ever concerned to show how the law shapes the lives of ordinary people and is reshaped by their struggles, McDonald ends his book with a demonstration of the continuing importance of Section 5 of the Voting Rights Act based on the history of the tiny Georgia hamlet of Keysville. Although Keysville had been a bustling town when it was chartered in 1890, it had declined so much by the 1930s that it abandoned its local government sometime in that decade. Not only was there no mayor, council, or bureaucracy, there was also no municipal water, no sewer system, no town fire or police protection. By 1985, its 300 people, nearly 250 of whom were African-Americans, were ready to reorganize a town government, but whites in the surrounding rural area of Burke County, fearing annexation and higher taxes, and stereotyping blacks as incapable of governing, had come out in opposition to reincorporation. Because town records had been lost and landmarks had been destroyed, the town boundaries and, thus, the eligible electorate were uncertain, and the effort to recreate the municipality was tied up by lawsuit after lawsuit filed in state courts by white opponents of reincorporation. Only Section 5, which required that the laws and procedures used to hold a referendum on reorganization and to elect municipal officers be approved by the Justice Department, prevented opponents from delaying the reestablishment indefinitely.

With the help of ACLU and Christic Institute lawyers, Keysville proponents prevailed, and in 1990, a town government with a black mayor, four black council members, and a fifth councilman, a white opponent of incorporation added for purposes of conciliation, held office securely. In the next few years, the town and county built a water tower, a fire station, a recreation center, a clinic, and a city hall, streets were paved, more areas were annexed, and more whites, many of whom had initially opposed the town's rebirth, were added to the government. McDonald has Keysville Mayor Emma Gresham conclude his book, in a statement worth quoting in full, both for its reflection on the history McDonald has so painstakingly analyzed and on the historical consciousness and sense of racial morality that Gresham exudes:

> I think whites felt threatened, but I very much did not want to be guilty of some of the things they were guilty of. It takes close contact and a lot of communication to get across the message that you have nothing to fear from the next person. We had to prove to whites that we were not going to have power and leave them out. The burden was on us to include them. That approach has done more for race re-

[8] *Bush v. Vera*, 517 U.S. 952 (1996).
[9] *Miller v. Johnson*, 515 U.S. 900 (1995).

lations in this town than anything else. (245)

Perhaps if judges, or at least the law professors who teach future judges, knew more about the realities of politics and power in places like Keysville, if they understood the historical development of voting rights more fully, if they saw that the present reflected both continuity and change, judicial decisions would be based less on abstraction and conjecture than they have been in the past decade. Perhaps if historians realized how rich the materials produced in legal cases are, how much legal cases influence lives, and how important the incremental changes brought about by largely unheralded people were and continue to be, they would rediscover institutional political history. I can think of no better place to begin the reformations than Laughlin McDonald's splendid book.

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